

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 16-cr-20460

v.

HON. MARK A. GOLDSMITH

EDWIN MILLS, et al.,

Defendants.

ORDER GRANTING IN PART DEFENDANTS EDWIN MILLS AND CARLO WILSON'S JOINT MOTION TO AMEND THE GROUP TWO SCHEDULING ORDER REGARDING ATKINS LITIGATION ONLY (Dkt. 597), DENYING AS MOOT DEFENDANT CARLO WILSON'S EX PARTE MOTION TO AMEND THE SCHEDULING ORDER (Dkt. 588), AND AMENDING THE GROUP TWO SCHEDULING ORDER (Dkt. 475)

This matter is before the Court on Defendants Edwin Mills and Carlo Wilson's joint motion to amend the Group Two scheduling order (Dkt. 597), in which they request an extension of the deadline for filing motions seeking relief under Atkins and its progeny, including expert reports, from January 2, 2019, to May 27, 2019. See Group Two Scheduling Order (Dkt. 475). The Government filed a response in opposition to the joint motion (Dkt. 617), to which Defendants replied (Dkt. 622).

On December 7, 2018, the Court held a telephonic status conference on the record. During the conference, the parties reached an agreement on amending the case schedule regarding Atkins litigation. Accordingly, the Court modifies the Group Two scheduling order as follows:

- **March 15, 2019:** Deadline for Defendants to file notice of an Atkins claim, specifying any neuropsychological testing performed, and identifying neuropsychological expert(s) who performed the testing;
- **March 27, 2019:** Deadline for the Government to file a memorandum, identifying neuropsychological experts upon whom it intends to rely in opposition to any Atkins

motion, attaching the experts' curriculum vitae, and giving notice of the type and scope of proposed neuropsychological testing of Defendants;

- **April 3, 2019:** Deadline for Defendants to file objections to the Government's proposed neuropsychological testing;
- **April 10, 2019:** Deadline for the Government to file any response to Defendants' objections regarding neuropsychological testing;
- **May 28, 2019:** Deadline for Defendants to file a motion seeking relief under Atkins and its progeny, including expert reports^[1];
- **June 27, 2019:** Deadline for the Government to file its response to any Atkins motion, including expert reports;
- **July 9, 2019:** Deadline for Defendants to file a reply in support of any Atkins motion;
- **July 18, 2019:** Evidentiary hearing on any Atkins motion, starting at 8:30 a.m. that day and continuing from day to day until completed. To the extent the Group One trial is still in process, the Court will consult with counsel in Group One and Group Two to address briefly recessing the Group One trial, in an effort to avoid unfairly burdening the Government in preparing for, and participating in, the Atkins evidentiary hearing.

The Court and counsel also discussed the advisability of addressing at an early opportunity legal issues regarding the Government's potential use of certain investigative and/or testing techniques as to adaptive functioning should Defendants raise adaptive functioning in their motion. To allow for a prompt decision on the Atkins motion should adaptive functioning be raised, the following schedule is set for briefing:

- **January 2, 2019:** Deadline for Government to file a memorandum addressing: (i) the nature of the Government's potential testing of Defendants regarding adaptive functioning; (ii) the nature of the Government's questioning of Defendants' family members, associates, or other persons as it bears on adaptive functioning; and (iii) Defendants' lack of standing to object to the Government's potential actions under (i) and (ii);
- **January 16, 2019:** Deadline for Defendants to file a response to the Government's memorandum.

¹ Although Defendants requested May 27, 2019, as the new deadline for filing an Atkins motion, the Court will be closed that day for Memorial Day.

- **January 23, 2019:** Deadline for the Government to file a reply.

In all other respects, the Group Two scheduling order remains the same. Because it grants in part Defendants' joint motion to amend the scheduling order, the Court denies as moot Wilson's ex parte motion to amend the scheduling order (Dkt. 588), which sought the same relief.

SO ORDERED.

Dated: December 12, 2018
Detroit, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge